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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JIHONG WANG, QI LI, LES AKIO OMORI, and ALAN BECK, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CHINA FINANCE ONLINE CO. LIMITED,

Defendant.

Case No.: 1:15-CV-07894-RMB

ORDER GRANTING LEGAL FEES IN CLASS ACTION

Legal Fees

Class Counsel has requested $900,000 in attorneys' fees which amounts to 30% of the $3 million Settlement Fund, in addition to $37,155.51 in expenses.

Pursuant to the factors set forth in Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2d Cir. 2000), the Court awards Class Counsel $650,000 in legal fees, which amounts to approximately 21.7% of the Settlement Fund, as well as $37,155.51 in expenses. See Hall v. Children's Place Retail Stores, Inc., 669 F. Supp. 2d 399, 405 (S.D.N.Y. 2009) (awarding fees of 15% of the settlement fund where the request was for 27%); In re Top Tankers, Inc. Sec. Litig., No. 06 CIV. 13761 (CM), 2008 WL 2944620, at *16 (S.D.N.Y. July 31, 2008) (awarding fees of 10% of the settlement fund where the request was for 25%); In re KeySpan Corp. Sec. Litig., No. 01 CV 5852(ARR), 2005 WL 3093399, at *3 (E.D.N.Y. Sept. 30, 2005) (awarding fees of 20% of the settlement fund where the request was for 33-$^{1}/_{3}$%); In re Dreyfus Aggressive Growth Mut. Fund Litig., 2001 WL 709262, at *6 (S.D.N.Y. June 22, 2001) (awarding fees of 15% of the settlement fund where the request was for 30%); Varljen v. H.J. Meyers & Co., 2000 WL 1683656, at *5 (S.D.N.Y. Nov. 8, 2000) (awarding fees of 20% of the settlement fund where the request was for 33%); see also In re Arakis Energy Corp. Sec. Litig., 2001 WL 1590512, at *9 (E.D.N.Y. Oct. 31, 2001) ("[T]he trend within this circuit after Goldberger has been to award attorneys' fees in amounts considerably[] less than 30% of common funds in securities class actions, even where there is a substantial contingency risk.").

Goldberger Factors

The first factor—"the time and labor expended by counsel"—reflects that Class Counsel worked 543.8 hours on this case since June 5, 2015, when the case commenced. (See Horne Decl, filed Feb. 21, 2017, Ex. 2 at 2.) The actual lodestar yields $350,347 in total legal fees. (Id.) Thus, the amount of fees requested by Class Counsel reflects a lodestar multiplier of 2.58. (Mem. of Law in Supp. of Pls.' Mot. for an Award of Attorneys' Fees and Reimbursement of Expenses, filed Feb. 21, 2017 ("Pls.' Mem."), at 15.) Class Counsel acknowledged at the "fairness" hearing on March 21, 2017 that the settlement of this action happened "relatively quickly" "after a motion to dismiss had been briefed, but not decided." (See H'rg Tr., dated Mar. 21, 2017, at 4, 6.) "[A]n attorneys' fee of approximately 20% . . . is a relatively generous percentage given the fact that there has been no trial and not even full discovery." Varljen, 2000 WL 1683656, at *5. The Court finds that fees of $650,000 (approximately 21.7% of the Settlement Fund) fairly compensates Lead Counsel for its work, and reflects a 1.86 lodestar multiplier. See Breiterman v. Roper Corp., 1990 WL 15535, at *3-4 (S.D.N.Y. Jan. 12, 1990).

The second factor—"the magnitude and complexities of the litigation"—does not appear to distinguish this case appreciably from many other securities fraud cases. See In re Elan Sec. Litig., 385 F. Supp. 2d 363, 374 (S.D.N.Y. 2005) (reducing fee award from 20% to 12% where "the factual and legal issues were not exceptionally novel"); KeySpan Corp., 2005 WL 3093399, at *9 (reducing fee award from 33-1/3% to 20% where "the issues . . . were not so novel or complex as to distinguish this case from the typical securities action"). Class Counsel argues unpersuasively that this case was unusually complex because Class Counsel needed to "review . . . public statements and media reports . . . to buttress their legal theory that the Langfang Investment, the Langfang Loan, and the Langfang Transfer were related party transactions," and "[Class] Counsel needed . . . a practical ability to quickly understand Chinese-language documents." (Pls.' Mem. at 5-6.) Class Counsel does not show that investigating related-party transactions makes this case especially complex. See In re Gilat Satellite Networks, Ltd., 2007 WL 2743675, at *15 (E.D.N.Y. Sept. 18, 2007) (where Lead Plaintiffs alleged that Defendants engaged in "related party transactions," "Plaintiffs' claims [we]re not particularly 'novel,' nor d[id] proof of the[] claims appear to be so complex so as to weigh significantly in favor of [an] award of generous attorneys' fees" (brackets and internal quotation marks omitted)). Reliance upon Chinese language translators is addressed through reimbursement of expenses. See Hart v. RCI Hosp. Holdings, Inc., 2015 WL 5577713, at *18 (S.D.N.Y. Sept. 22, 2015) (granting request for translation expenses); Campos v. Goode, No. 10 CIV. 0224 DF, 2011 WL 9530385, at *8 (S.D.N.Y. Mar. 4, 2011) (same).

The third factor—the risk of the litigation—does not support Class Counsel's request for fees of 30% of the Settlement Fund. Class Counsel argues "[t]his was an exceptionally risky case" because (1) "[a]t the time of filing, there was a significant risk that the Chinese government would shutter [Defendant]," i.e. the Chinese government, it is asserted, arrested, or attempted to arrest, several of Defendant's officers; and (2) there were no "parallel investigations from government agencies or offices or bankruptcy examiners, or even accounting restatements, that substantiate claims of fraud and publicly reveal facts showing the fraud." (Pls.' Mem. 10-11.) Class Counsel does not explain how the arrests and/or attempted arrests created a "significant risk" Defendant would be unable to pay any judgment. See In re AOL Time Warner, Inc. Sec., 2006 WL 3057232, at *16 (S.D.N.Y. Oct. 25, 2006) (where "[t]he prime corporate defendant remained solvent throughout" the case, "class counsel . . . faced . . . lower-than-average risk of non-collection"). As to the risk that Defendant would be unable to pay any judgment, it was Lead Plaintiffs' election to voluntarily dismiss the other defendants in this case (Notice of Voluntary Dismissal Without Prejudice, filed Mar. 9, 2016, at 1-2), which contributed to the risk Lead Plaintiffs describe. See also In re Interpublic Sec. Litig., 2004 WL 2397190, at *11 (S.D.N.Y. Oct. 26, 2004) (the "risk of non-payment" is "viewed as of the time of filing the suit"). Even assuming arguendo that Class Counsel had shown a significant risk of nonpayment, case law supports a fee of approximately 21.7%. See In re Indep. Energy Holdings PLC, 2003 WL 22244676, at *9 (S.D.N.Y. Sept. 29, 2003) (20%). Case law also supports a fee of approximately 21.7% where counsel lacks the benefit of a parallel investigation. See In re Colgate-Palmolive Co. ERISA Litig., 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014); Interpublic Sec., 2004 WL 2397190, at *13 (12%). The other risks cited by Class Counsel—such as the "formidable challenges to successful pleading" imposed by the PSLRA—are "general hurdles" facing everyone and do not justify Class Counsel's request for fees of 30%. See Goldberger, 209 F.3d at 54 (where "counsel point[ed] to . . . general hurdles—such as the defenses available to defendants, including lack of scienter—that they overcame in achieving a settlement"). The Court finds that Class Counsel has not shown significant litigation risk to justify a larger fee award than contemplated by the Court.

"The fourth Goldberger factor—'the quality of representation'—was acceptable and expected. Courts should not necessarily award an increased fee where counsel simply displays the general level of skill expected." Beane v. Bank of N.Y. Mellon, 2009 WL 874046, at *8 (S.D.N.Y. Mar. 31, 2009).

"With respect to the fifth Goldberger factor—i.e., 'the requested fee in relation to the settlement'— . . . a 'fee award should be assessed based on scrutiny of the unique circumstances of each case.'" Elan Sec. Litig., 385 F. Supp. 2d at 375 (quoting Goldberger, 209 F.3d at 53). Plaintiffs' request for fees amounting to 30% of the settlement fund is excessive in this case. "[T]he trend within this circuit after Goldberger has been to award attorneys' fees in amounts considerably[] less than 30% of common funds in securities class actions, even where there is a substantial contingency risk." Arakis Energy, 2001 WL 1590512, at *9. **"Courts in this District have tended toward regarding 25% (or less) as a more appropriate bench-mark."** Gordon v. Sonar Capital Mgmt. LLC, 2016 WL 4272994 (S.D.N.Y. Aug. 10, 2016). In fact, fees below 20% are not uncommon. See, e.g., Citigroup, 988 F. Supp. 2d at 373 (16%); Hall, 669 F. Supp. 2d at 405 (15%); Elan Sec. Litig., 385 F. Supp. 2d at 375 (12%). Fees of $650,000, which are approximately 21.7% of the fund, are in line with fees awarded by this Court and other courts in this Circuit. See Arakis Energy, 2001 WL 1590512, at *9.

The Court's review of Class Counsel's time sheets indicates that a fee reduction is warranted. The time sheets include vague, nonspecific, and uninformative descriptions such as "review docs," "confer [with another attorney]," and "call with client" (Lead Counsel's Time Sheets, filed Feb. 22, 2017, ("Time Sheets"), at 2, 7, 10). See Flores v. Mamma Lombardi's of Holbrook, Inc., 104 F. Supp. 3d 290, 311 (E.D.N.Y. 2015) (entries such as "Review files," "Review/Meeting," "Meet with client," and "Call to client" "fail[ed] to provide sufficient information to permit review for reasonableness"); Mills v. Capital One, N.A., 2015 WL 5730008, at *13 (S.D.N.Y. Sept. 30, 2015) (entries such as "Communication with witness regarding information" "[we]re vague and d[id] not by themselves provide enough information to assess the reasonableness of the hours billed"); In re Nortel Networks Corp. Sec. Litig., 2010 WL 3431152, at *3 (S.D.N.Y. Aug. 20, 2010) (entries such as "claims project cont'd," "project work," and "further legal research" "[we]re too imprecise and vague for meaningful review much less reimbursement"). The time sheets may also include unnecessary tasks such as "refil[ing] complaint" (Time Sheets at 12), when the docket shows that the previous filing was deficient due to attorney error. (See Docket, "Notice to Attorney Regarding Deficient Pleading," Dec. 28, 2015.) Confusing entries to "file[] ex parte application" and on the same day "supervise[] filing of ex parte application" were filed by the same attorney (see Time Sheets at 3). See Hall v. ProSource Techs., LLC, 2016 WL 1555128, at *13 (E.D.N.Y. Apr. 11, 2016) ("Courts should not award attorneys' fees for hours that were . . . unnecessary to the litigation.").

The sixth factor—"public policy considerations"—supports the Court's lower **(but still generous)** fee because "[t]he Court does not believe that an exceedingly high rate of compensation is required to encourage plaintiffs' counsel to bring securities class actions." In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig., 2007 WL 313474, at *21 (S.D.N.Y. Feb. 1, 2007) (reducing counsels' fee request by 5.5%); see also Goldberger, 209 F.3d at 57 (affirming award of 4% of the settlement fund because of, among other reasons, "[the Court's] longstanding concern for moderation[] . . . [which] [wa]s amplified by [its] nagging suspicion that attorneys in [securities class action] cases are routinely overcompensated for such things as contingency risk"); In re Twinlab, 187 F. Supp. 2d at 87 (awarding fees of 12% rather than the requested 33% because, among other reasons, "public policy may not be the major reason for bringing a securities fraud class action"); Arakis Energy, 2001 WL 1590512, at *10 (the "potential of a large payday guaranteed by a high percentage benchmark may not be necessary in order to persuade plaintiffs' attorneys to fulfill the public necessity of bringing these class actions").

The Second Circuit Court of Appeals "encourage[s] the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage," known as a "lodestar cross check." Carlson v. Xerox Corp., 355 F. App'x 523, 526 (2d Cir. 2009). In this case, the lodestar is $350,347. (Horne Decl., Ex. 2 at 2.) Lead Counsel's request for fees of $900,000 would result in a lodestar **multiplier** of 2.58. (See Pls.' Mem. at 15.) The case law does not often support "awarding a percentage as high as 30% . . . in a case . . . where 30% represents more than twice Counsel's billings." In re Dreyfus Aggressive Growth Mut. Fund Litig., 2001 WL 709262, at *6 (S.D.N.Y. June 22, 2001). The Court's award of $650,000 reflects a lodestar multiplier of 1.86, which itself is generous, and the Court finds such a multiplier certainly to be within the range of reasonableness. See Carlson, 355 F. App'x at 526 (where District Court reduced fees from 20% to 16%, yielding a lodestar multiplier of 1.25, "[the Court of Appeals] could not conclude that the fee awarded in th[e] case [wa]s unreasonable"); In re Telik, Inc. Sec. Litig., 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("[A] 1.6x multiplier is well within the range of reasonableness."); Banyai v. Mazur, 2008 WL 5110912, at *6 (S.D.N.Y. Dec. 2, 2008) (reducing fees from 24.6% to 20%, and finding that "a 1.93 multiplier of the lodestar[] is within the range of reasonableness"); In re Glob. Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 470 (S.D.N.Y. 2004) (awarding a 19% fee that "yield[ed] a multiplier of approximately 1.5"); Ross v. A.H. Robins Co., 700 F. Supp. 682, 687 (S.D.N.Y. 1988) (a multiplier of 1.8 was "reasonable"); see also Theodore Eisenberg and Geoffrey P. Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008, 7 J. Empirical Legal Stud. 248, 272 (2010) (mean lodestar multiplier for Second Circuit is 1.58, and the mean for

"Securities" cases in all Circuits is 1.75). A multiplier of 2.58 in these circumstances is excessive.

Claims Administrator's Fees

The Claims Administrator, the Court is advised, anticipates requesting fees and out-of-pocket expenses totaling up to $132,520.92. (See Mulholland Decl., filed Mar. 20, 2017, at 1-2.) The Court will review the Claims Administrator's time sheets and supporting receipts before awarding any fees and expenses to the Claims Administrator. Having discussed the issue with the parties on March 21, 2017 (see H'rg Tr., dated Mar. 21, 2017, at 8-9), and having reviewed the record and recent claims administrator awards in other securities actions, the Court finds that it is fair and appropriate to cap the amount and to permit Lead Counsel to set aside no more than $132,520.92 of the Settlement Fund for fees and expenses of claims administration. See Blank v. Jacobs, 2013 WL 1310503, at *6 (E.D.N.Y. Mar. 27, 2013).

The Claims Administrator is directed to submit its final application for fees and expenses as part of Lead Plaintiffs' motion for final distribution, which is to be made within 90 days of the fairness hearing (see H'rg Tr. at 10), i.e. on or before June 19, 2017.

Conclusion and Order

For the reasons above, Lead Plaintiffs' Motion [#137] is granted in part and denied in part.

Dated: New York, New York
March 24, 2017

RMB

RICHARD M. BERMAN
U.S.D.J.